Office - Supreme Court, U.S.
FILED
JUL 13 1982
ALEXANDER L. STEVAS,
CLERK

82-64
No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RICHARD JEROME PARMLEY,
Petitioner,

v.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

MARK H. KRUGER
120 South Central, Suite 404
St. Louis, Missouri 63105
(314) 726-6006

DEBORAH BENOIT
120 South Central, Suite 404
St. Louis, Missouri 63105
(314) 726-6006
Counsel for Petitioner

July 14, 1982

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

QUESTION PRESENTED

Whether the Committee of Bar Examiners of the State Bar of California's refusal to grant petitioner either a hearing or an independent review regarding his scores on the October 1981 California First Year Law Students' Examination constitutes a violation of petitioner's rights under the due process or equal protection clauses of the fourteenth amendment to the U. S. Constitution.

TABLE OF CONTENTS

	Page
Question Presented	i
Opinion Below	1
Jurisdiction	1
Statutory and Constitutional Provisions Involved	2
Statement of the Case	3
Reasons For Granting The Writ:	
1. The Decision Below Is Not In Accord With Applicable Decisions Of This Court Regarding Due Process And Equal Protection Violations Prior To Admission To The Bar	7
2. The Decision Below Raises Significant Issues That Should Be Resolved By This Court	11
Conclusion	12
Appendix:	
1. Order of the Supreme Court of California Denying the Petition for Review	A-1
2. Order of the Supreme Court of California Denying the Petition for Rehearing	A-2
3. Text of West's Ann. Bus. & Prof. Code §6060	A-3

TABLE OF AUTHORITIES

Cases:

Bib'le v. Committee of Bar Examiners, 162 Cal. Rptr. 426, 606 P.2d 733 (1980) 8

Goldsmith v. United States Board of Tax Appeals, 270 U.S. 117 (1926) 7

In Re Investigation of Conduct of Examination For Admission to Practice Law, 1 Cal.2d 61 33 P.2d 829 (1934) 8

Royster Guano Co. v. Virginia, 253 U.S. 412 (1920) 10

Salot v. State Bar, 3 Cal.2d 615, 45 P.2d 203 (1935) 8

Schware v. Board of Bar Examiners, 353 U.S. 232 (1957) 7

Staley v. State Bar of California, 17 Cal.2d 119, 109 P.2d 667 (1941) 8

Stanton v. Stanton, 421 U.S. 7 (1975) 10

Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963) 7

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RICHARD JEROME PARMLEY,
Petitioner,

v.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

OPINION BELOW

Petitioner was informed by the Committee of Bar Examiners of the State of California that his request for an independent re-examination of his October 1981 First Year Law Students' Examination had been denied. The Supreme Court of California entered two orders, both unreported and without opinions, denying petitioner's Petition for Review and Petition for Rehearing. Copies of these orders appear in the Appendix hereto.

JURISDICTION

The order of the Supreme Court of California denying the Petition for Review was entered on March 25, 1982. A timely

Petition for Rehearing was denied on April 15, 1982, and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

1. Fourteenth Amendment to the United States Constitution, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall the State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Rule VI, Section 61 of the Rules Regulating Admission to Practice Law in California.

> Every person who intends to seek admission as a "general applicant" (except those who become entitled to exemption as prescribed by this Rule) shall file application for and take the first-year law students' examination given next following the completion of one year of law study as prescribed by Section 91 hereof. An applicant who is required to take such examination shall not receive credit for any law study until he or she has passed such examination or become entitled to exemption therefrom; nor shall he or she receive credit for more than one year of law study as of the date of passing such examination or becoming entitled to exemption therefrom, unless upon petition and for good cause in a particular case the committee decides that additional credit should be given.

A petition requesting credit for such subsequent study or some part thereof may be filed after the petitioner has passed the first-year law students' examination; it shall state fully the reasons for not taking or not passing the prior first-year examination or examinations, shall be verified, and shall be accompanied by a filing fee and by such documentary evidence as the petitioner may wish the committee to consider.

3. West's Ann. Bus. & Prof. Code §6060 (See Appendix 3 for complete text).

STATEMENT OF THE CASE

Petitioner desires to take the California bar examination. California law requires that a student at an unaccredited law school must take and pass a first year law students' examination after the first year of law school as a necessary prerequisite to taking the California bar examination. A student at an unaccredited law school does not receive credit for his first year of law study or any subsequent law study until he has passed the first year law students' examination, unless the Committee of Bar Examiners decides credit can be given for good cause shown. West's Ann. Bus. & Prof. Code §6060(g).

Since 1978 petitioner has been a law student at the Laclede School of Law in St. Louis, Missouri, an unaccredited law school. The Laclede School of Law has applied for provisional accreditation with the Committee of Bar Examiners of the State Bar of California, but that accreditation has not yet been granted.

Petitioners applied to take the June 1981 California First Year Law Students' Examination (FYLSE), and received an admission card to take that examination. Upon his arrival in San Francisco to take the examination, petitioner was informed that

his admission card was not valid. Shortly thereafter, petitioner was informed that if he would sign a document stating that his examination may not be graded, he would be permitted to take the examination. Petitioner did sign the document and did take the examination; however, this series of events just moments before taking the examination caused him great emotional stress. Petitioner later received notification that he had failed the June 1981 California FYLSE.

At the time petitioner received this notification, he had completed approximately seventy-eight hours of law study at the Laclede School of Law. In order to preserve his rights to obtain credit for those hours of law study and because of the adverse conditions under which he had taken the June 1981 examination, petitioner filed with the Committee of Bar Examiners a petition for an anticipatory ruling that he had good cause for not having passed the June 1981 examination and that upon passing a future examination, credit for all law study beyond the first year should be granted. This petition was filed with the Committee of Bar Examiners pursuant to Rule VI, Section 61 of the Rules Regulating Admission to Practice Law in California

On September 30, 1981 petitioner was notified by the Committee of Bar Examiners that he had been granted an anticipatory ruling that he would not be denied credit for law study completed in excess of one year solely because of his failure of the June 1981 examination so long as he successfully passed the October 1981 First Year Law Students' Examination.

Petitioner then took the October 1981 examination and was later informed that he did not pass, having attained a score of 535 out of a possible 800. On that examination, 560 was the lowest possible passing grade, and the persons scoring between 540 and 560 were entitled to an independent reappraisal of their examinations.

Petitioner filed a petition with the Committee of Bar Examiners requesting an independent re-examination of his essay questions on the October 1981 examination. In that petition, petitioner raised for the first time the issue that any refusal to grant him an independent reappraisal of his examination would violate his due process and equal protection rights under the fourteenth amendment to the U.S. Constitution. Petitioner argued in that petition that all seven students from Laclede School of Law who took the October 1981 examination failed, and their scores were largely identical. Petitioner suspected some irregularities regarding the grading of the examinations of the Laclede students, and for that reason requested the independent reappraisal of his examination.

After some resistance on the part of the Committee of Bar Examiners, petitioner's request was placed on the agenda for the next meeting of the Committee of Bar Examiners. After the meeting petitioner was informed that his petition for an independent reappraisal of his examination had been denied. Although he so requested, petitioner was not given the opportunity to attend the meeting, present evidence, ask questions, cross-examine witnesses, or otherwise present his case to the Committee of Bar Examiners.

As a matter of policy, the Committee of Bar Examiners releases the bar examination test questions to the public, and a person who does not pass the bar examination can obtain copies of his examination answers, the test questions, and model answers.

As a matter of policy, the Committee of Bar Examiners provides that a person who does not pass the first year law students' examination has no access to model answers and can only obtain an independent review of his examination if his score falls between 540 and 560 out of 800.

Petitioner then filed a Petition for Review in the Supreme Court of California, again requesting an independent reappraisal of his October 1981 examination and alleging that his constitutional rights to due process and equal protection would be violated if this independent reappraisal was not granted because of the suspected irregularities in the grading and administration of the examination. The petition was filed, but before the State Bar of California could even file a response brief, the Supreme Court of California entered its order, without opinion, denying petitioner's Petition for Review.

Petitioner then filed a timely Petition for Rehearing but that also was denied by the Supreme Court of California without opinion.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Is Not In Accord With Applicable Decisions Of This Court Regarding Due Process And Equal Protection Violations Prior To Admission To The Bar.

Over the years this Court has been presented with several cases involving the due process rights of applicants for bar admission. This Court has decided that a state cannot exclude a person from the practice of law or from any other occupation in a manner, or for reasons, that contravene the due process and equal protection clauses of the fourteenth amendment. *Schware* v. *Board of Bar Examiners*, 353 U.S. 232 (1957).

This Court has held that before an applicant can be denied admission to the bar, he is entitled to certain necessary elements of procedural due process, including notice, a hearing on the grounds for his rejection, confrontation of witnesses, and the opportunity to present evidence on his behalf. *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96 (1963). See also *Goldsmith* v. *United States Board of Tax Appeals*, 270 U.S. 117 (1926).

Petitioner contends that although he was a law student rather than a law graduate, and although the examination he took and failed was a first year law students' examination rather than the bar examination, because of the circumstances surrounding bar admission in California he is entitled to the same procedural due process protections that would be given to a bar applicant according to the *Willner* case.

Admission to the bar in most states involves passing the bar examination. If a person did not pass the bar examination, or was for some other reason denied admission to the bar, he would be entitled to the procedural due process protections as articulated by this Court in *Willner*. Since the petitioner was a student at an unaccredited law school, admission to the bar involves passing the first year law students' examination *and* pass-

ing the bar examination. The Supreme Court of California has recently upheld the validity of the first year law students' examination as a precondition to taking the bar examination in California. *Bib'le* v. *Committee of Bar Examiners,* 162 Cal. Rptr. 426, 606 P.2d 733 (1980). Since the first year law students' examination is a requirement that must be overcome before admission to the bar in California, petitioner contends that the procedural due process protections as defined in *Willner* are also applicable to a person who does not pass the first year law students' examination. By making the first year law students' examination necessary for students at unaccredited law schools before taking the California bar examination, California has created an entitlement that should be governed by the same procedural due process protections as spelled out by this Court in *Willner.*

If that is true, petitioner was entitled to notice, a hearing, and the opportunity to present his evidence on his petition that was originally presented to the Committee of Bar Examiners. Petitioner was given none of these. The petition for an independent reappraisal of petitioner's examination was reluctantly placed on the agenda of a meeting of the Committee of Bar Examiners and summarily denied with no input from the petitioner except the written petition.

The standard as set forth by the Supreme Court of California in evaluating petitions of unsuccessful bar applicants is that the examination will be reviewed only where there is a claim of fraud, imposition, coercion, arbitrariness, or that the determination was incorrect or unfair. *Salot* v. *State Bar,* 3 Cal.2d 615, 45 P.2d 203 (1935). *Staley* v. *State Bar of California,* 17 Cal.2d 119, 109 P.2d 667 (1941). In at least one instance that is reported, the Supreme Court of California has ordered an independent review of bar examination scores when there was evidence of irregularity and unfairness in the administration of the examination. *In Re Investigation of Conduct of Examination For Admission To Practice Law,* 1 Cal.2d 61, 33 P.2d 829 (1934).

Yet, when petitioner requested an independent reappraisal of his examination scores because of suspected irregularity regarding the grading of his examination and the examinations of other students from Laclede School of Law, he was not only refused the independent reappraisal but was also denied his procedural due process rights as specified in *Willner*. Even the Petition for Review in the Supreme Court of California was denied by the Court before the respondent had an opportunity to file its response brief. Because passing the first year law students' examination is on equal footing with passing the bar examination in California in order to obtain admission to the bar, petitioner contends that *Willner* applies to the first year law students' examination, and his petition for an independent reappraisal of his examination scores should have been properly considered by the Committee of Bar Examiners so as to give petitioner his procedural due process rights, and then should have been granted.

The petitioner also contends that his rights under the equal protection clause of the fourteenth amendment have been violated. As discussed above, the first year law students' examination and the bar examination are both preconditions to admission to the bar in California. Yet there are striking differences in the manner in which the two examinations are graded.

An unsuccessful bar applicant can appeal his scores pursuant to the procedural due process rights as articulated in *Willner;* an unsuccessful FYLSE applicant can only request an independent reappraisal of his score if it falls between 540 and 560 out of 800. An unsuccessful bar applicant who wishes to appeal can obtain copies of his answers as well as the test questions and model answers in order to prepare his appeal. An unsuccessful FYLSE applicant can obtain his own examination, but is not allowed access to any model answers.

This Court has held in *Schware* that a state cannot exclude a person from the practice of law for a reason that contravenes the equal protection clause of the fourteenth amendment. Fur-

ther, this court has stated that a classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co.* v. *Virginia,* 253 U.S. 412 (1920); *Stanton* v. *Stanton,* 421 U.S. 7 (1975).

California has a state law that requires students at unaccredited law schools to pass the first year law students' examination in addition to the bar examination before being admitted to the bar. Yet an unsuccessful applicant for the FYLSE is treated very differently and given significantly fewer rights than an unsuccessful bar applicant. An unsuccessful bar applicant can make use of the model answers to prepare his appeal. The model answers can be a benchmark against which to compare one's examination answers and thereby prove there was an error or other irregularity in grading. Yet this important aid is not available to an unsuccessful FYLSE applicant. Petitioner can think of no reason why California would decide to deny access to model answers to unsuccessful FYSLE applicants while making them available to unsuccessful bar applicants.

Petitioner contends that these dual standards bear no rational relationship to a legitimate state purpose because both examinations are necessary to obtain admission to the bar in California, and a person who is unsuccessful on one examination should be treated the same as a person who is unsuccessful on the other. Therefore, these dual standards violate equal protection as applied to the petitioner because they are inconsistent with previous decisions of this Court interpreting the equal protection clause of the fourteenth amendment.

2. The Decision Below Raises Significant Issues That Should Be Resolved By This Court.

First, this case involves petitioner's right to be admitted to a profession and to earn a livelihood.

Petitioner cannot be admitted to the practice of law in California without first passing the first year law students' examination. Therefore, that examination is as much an absolute requirement to the practice of law in California for petitioner and those similarly situated as is the bar examination itself.

Second, this Court in *Schware* and *Willner* has previously held that because a bar examination is a *sine qua non* for the practice of law, certain due process and equal protection safeguards are guaranteed applicants to the bar at that stage of the proceedings. While those constitutional safeguards are guaranteed to those persons taking the regular bar examination in California, no procedural due process rights adhere to those persons taking the first year law students' examination in California, even though the latter is every bit as much of an obstacle to the practice of law in California as the former.

Therefore, an entire class of persons are effectively denied procedural due process and equal protection rights guaranteed them by the U.S. Constitution in their application for admission to the legal profession at a stage that may prove absolutely fatal to their application for admission to the bar.

In order to protect the constitutional rights of this group of people who are attempting to be admitted to a profession and earn a livelihood, this Court should grant the Petition for Certiorari to resolve these important issues.

CONCLUSION

For the above stated reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of the State of California.

Respectfully submitted,

MARK H. KRUGER
120 South Central, Suite 404
St. Louis, Missouri 63105

DEBORAH BENOIT
120 South Central, Suite 404
St. Louis, Missouri 63105

July 14, 1982

APPENDIX 1

ORDER DENYING WRIT OF REVIEW

S.F. No. 24407

IN THE SUPREME COURT OF THE STATE
OF CALIFORNIA
IN BANK
(Filed March 25, 1982)

Richard Jerome Parmley

v.

The State Bar of California

Petition for writ of review DENIED.

Bird
Chief Justice

APPENDIX 2

CLERK'S OFFICE, SUPREME COURT
4250 State Building
San Francisco, California 94102

April 15, 1982

I have this day filed Order,

REHEARING DENIED
&
APPEAL FOR STAY DENIED

In re: S.F. No. 24407

Richard Jerome Parmley

vs.

The State Bar of California Etc.

Respectfully,

Clerk

APPENDIX 3

BUSINESS AND PROFESSIONS CODE § 6060

ARTICLE 4. ADMISSION TO THE PRACTICE OF LAW

§ 6060. Qualifications; examination and fee

To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall:

(a) Be of the age of at least 18 years.

(b) Be of good moral character.

(c) Before beginning the study of law, have either:

(1) Completed at least two years of college work, which college work shall be not less than one-half of the collegiate work acceptable for a bachelor's degree granted upon the basis of a four-year period of study by a college or university approved by the examining committee; or

(2) * * * Have attained in apparent intellectual ability the equivalent of at least two years of the college work hereinabove defined. Such equivalent with respect to a person applying for admission to a law school accredited by the examining committee shall be determined by the dean or faculty thereof and with respect to all other persons shall be determined by the examining committee. The determination by the examining committee may be made after a personal interview with the person or the examining committee may require him to pass a written examination. Such examination may be given by the examining committee, or, if the examining committee so elects, the examination may be given under its supervision by such members of the

---

Asterisks * * * indicate deletions by amendment

faculty of a college as the examining committee may select or by the Department of Education of this state: provided, however, that any person who receives an adverse determination by the committee without an examination or fails an examination given directly by the committee shall, upon demand made within 30 days after receiving notice thereof, have the right to be reexamined either by such faculty members or department as the committee may decide. In the event that the examination is given by the Department of Education, a fee for such examination shall be charged by the department, which fee shall not exceed fifteen dollars ($15).

The requirements of paragraph (2) of this subdivision shall not apply to a person who had reached the age of 25 years prior to commencing the study of law and who commenced such study and registered with the examining committee as provided in subdivision (d) of this section prior to January 1, 1955.

(d) Have registered with the examining committee as a law student within three months after beginning the study of law. The examining committee, upon good cause being shown, may permit a later registration.

(e) Have either:

(1) Graduated from a law school accredited by the examining committee requiring substantially the full time of its students for three years.

(2) Graduated from a law school accredited by the examining committee requiring a part only of its students' time for four years.

(3) Studied law diligently and in good faith for at least four years, which study shall be:

(i) In a law school that is authorized to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year; or

(ii) In a law office in this state and under the personal supervision of a member of the State Bar of California who is, and for at least five years last past continuously has been, engaged in the active practice of law; or

(iii) In the chambers and under the personal supervision of a judge of a court of record of this state; or

(iv) By instruction in law from a correspondence law school requiring 864 hours of preparation and study per year for four years.

(v) By any combination of the methods referred to in paragraph (3) of this subdivision.

It shall be the duty of the attorney or judge referred to under (ii) and (iii) of paragraph (3) of this subdivision to render such periodic reports to the examining committee as the committee may require.

(4) Commence the study of law and registered as a law student as provided in subdivision (d) of this section prior to January 1, 1954, and completed four years of law study, diligently and in good faith.

(f) Have passed a final bar examination given by the examining committee.

(g) After completion of his first year of law study, have passed a first-year law student's examination given by the examining committee. This requirement shall not apply to a student who satisfactorily completes the first-year course of instruction in a law school accredited by the examining committee and who either (1) commenced the study of law and registered with the examining committee as provided in subdivision (d) of this section prior to January 1, 1954, or (2) had completed at least two years of college work as defined in this section prior to matriculating in such accredited law school, nor shall this requirement apply to an applicant who has passed the bar ex-

amination of a sister state or of a country wherein the common law of England constitutes the basis of jurisprudence. An applicant who is required to take such first-year examination shall not receive credit for his first year of law study until he has passed such examination, nor shall he receive credit for any law study subsequent to the first year, and before he shall have passed such examination, unless for good cause in a particular case the committee decides that credit should be given for such subsequent study or for some part thereof.

The examination which the students in their first year of law studies are required to take shall be given twice a year at reasonable intervals.

(Amended by Stats.1974, c. 316, p. 631, § 1, urgency, eff. May 31, 1974.)

Office - Supreme Court, U.S.
FILED
AUG 11 1982
ALEXANDER L. STEVAS,
CLERK

NO. 82-64

IN THE

Supreme Court of the United States

October Term, 1981

RICHARD JEROME PARMLEY,
Petitioner,

vs.

THE STATE BAR OF CALIFORNIA
and
THE COMMITTEE OF BAR EXAMINERS OF
THE STATE BAR OF CALIFORNIA,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

RESPONDENTS' BRIEF IN OPPOSITION

HERBERT M. ROSENTHAL
MAGDALENE Y. O'ROURKE
555 Franklin Street
San Francisco, California 94102
(415) 561-8200

ROBERT M. SWEET
1230 West Third Street
Los Angeles, California 90017
(213) 482-8220

Attorneys for Respondents

QUESTION PRESENTED

Does the California Supreme Court's denial of a petition to review and reverse the decision of the Committee of Bar Examiners of The State Bar of California to refuse to re-read and re-evaluate petitioner's essay answers on the October 1981 First-Year Law Students' Examination, which petitioner failed to pass, constitute a violation of petitioner's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution?

TABLE OF CONTENTS

	Pages
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
COUNTERSTATEMENT OF THE CASE	2-11
REASON THE WRIT SHOULD BE DENIED	12-20
1. Petitioner's Constitutional Challenges to the Decision Below Are Without Merit	
CONCLUSION	21
APPENDIX A	1-6

TABLE OF AUTHORITIES

	Pages
Cases	
Admission to Practice Law, In re, 1 Cal.2d 61 (1934)	16
Bib'le v. Committee of Bar Examiners, 26 Cal.3d 548 (1980)	19
Konigsberg v. State of California, 353 U.S.252, 77 S.Ct. 722 (1957)	10
Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232; 77 S.Ct. 752 (1957)	12
Willner v. Committee on Character and Fitness, etc., 373 U.S. 96; 83 S.Ct. 1175 (1963)	13, 17
Statutes	
California Business and Professions Code Section 6060(g)	5
Rules	
Missouri Supreme Court Rules Rule 8.03(a)(2)	2
California Rules of Court Rule 957	4
Rules Regulating Admission to Practice Law in California Rule VI, section 61	5-6

No. 82-64

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1981

RICHARD JEROME PARMLEY,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and
THE COMMITTEE OF BAR EXAMINERS OF
THE STATE BAR OF CALIFORNIA,

Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of the
State of California

RESPONDENTS' BRIEF IN OPPOSITION

Respondents respectfully request that this Court deny the petition for writ of certiorari, seeking review of the California Supreme Court's orders in

this case filed March 25, 1982 and April 15, 1982. Copies of the orders are attached to the petition for writ of certiorari as appendix 1 and appendix 2, respectively.

COUNTERSTATEMENT OF THE CASE

Petitioner commenced his law studies in September 1978 at Laclede School of Law, an unaccredited law school in the state of Missouri and received the degree of Juris Doctor from that school January 13, 1982. He is not eligible to take the bar examination in the state of Missouri because Laclede is unaccredited.*

---

* Pursuant to rule 8.03(a)(2) of the Missouri Supreme Court Rules, "No person shall be eligible to take the bar examination until such person shall have: . . . Graduated with an LL.B. or J.D. degree, or equivalent first degree in law, from a law school approved by the Section of Legal Education and Admissions to the Bar of the American Bar Association."

Students enrolled at Laclede sign a statement to the effect that they have read and understand the following notice which appears in the 1980-1983 Laclede School of Law Bulletin:

> "Laclede School of Law is not accredited by the American Bar Association. No representation is made or implied that graduates of Laclede are eligible to take bar examinations leading to licensing as lawyers. The school is making plans, and exerting reasonable effort, to secure approval for our graduates to take the Missouri Bar. If approval is not granted, graduates will not be able to take the bar examination and consequently will not be able to practice law."

In the fall of 1980 Laclede applied to the Committee of Bar Examiners of The State Bar of California ("Committee") for preliminary approval and provisional accreditation. In keeping with its policy of not considering for California accreditation a school which is not recognized in the state where it is

located, the Committee denied the application.

An unaccredited law school that is located outside the state of California may file for registration with the Committee and if the registration is accepted, persons who study at that school and can meet California standards, and comply with California admissions laws, may seek certification to the California Supreme Court for admission and license to practice law in California. (See rule 957, California Rules of Court, attached as appendix A.)

Laclede filed for registration with the Committee on November 20, 1980. At its June 21, 1981 meeting, the Committee accepted Laclede's registration, nunc pro tunc, as of the beginning of the 1980-1981 school year. Thus, petitioner and other Laclede students became eligible to seek certification for

admission to practice in California.

As a prerequisite to taking the California General Bar Examination and seeking certification for admission, any person who studies law at an unaccredited law school must take and pass the First-Year Law Students' Examination ("FYLSX") after completion of the first year of law study. For purposes of fulfilling admissions requirements, such person is given no credit for the first year of law study until the FYLSX is passed; and no credit is given for law study completed subsequent to the first year and before the FYLSX is passed, unless the Committee decides, for good cause shown in a particular case, that additional credit should be given. (See Cal. Bus. & Prof. Code, § 6060(g), copy attached to Petition for Writ of Certiorari, appendix 3; see also rule VI, § 61,

Rules Regulating Admission to Practice Law in California, copy set forth in Petition for Writ of Certiorari, pp. 2 and 3.)

The FYLSX is given in June and October of each year. An applicant may sit for the examination as many times as desired until it is passed.

Petitioner took and failed to pass the FYLSX in June 1981 and in October 1981. He did not apply to take the June 1982 examination.*

The examinations which petitioner took consisted of four essay and one hundred multiple-choice questions on contracts, torts and criminal law. The maximum score possible on each portion

---

* After completing his law studies at Laclede in January 1982, petitioner filed an application to take the February 1982 California General Bar Examination, but was not eligible to sit for that examination because he had not passed the FYLSX.

of the examinations was 400 points, with a total possible score of 800 points. In order to pass either the June 1981 FYLSX or the October 1981 FYLSX, it was necessary to receive a score of 560 points or 70 percent of 800.

Petitioner received a failing score of 494 points on the June 1981 FYLSX and a failing score of 535 points on the October 1981 FYLSX.

If an applicant does not pass the FYLSX but receives a total score of 540 points or more, the applicant's essay answers are automatically reappraised by an independent reappraiser as a routine part of the grading process. Petitioner did not receive a high enough score on either the June 1981 or the October 1981 FYLSX to be eligible for reappraisal of his essay answers.

Examination papers are retained by the Committee for a period of four

months following the release of results. During that time, applicants who fail to pass the examination may inspect their papers at either the Los Angeles or San Francisco office of the Committee. After the four-month period, the papers are destroyed.*

After petitioner failed to pass the October 1981 FYLSX, he informally requested that his essay answers be re-read and re-evaluated by an independent reappraiser. In response to that request, he was informed that it is Committee policy to refuse to entertain requests for reconsideration of grades unless the applicant can show that a departure from established grading procedures or an arithmetical or clerical error caused a failing grade or

---

* Because petitioner's examination papers are the subject of litigation, they have not been destroyed.

prevented automatic reappraisal of essay answers.

Subsequently, petitioner filed a formal petition with the Committee alleging that he had, in fact, passed the October 1981 FYLSX but received a failing grade because he lacks the ability to write legibly and his essay answers were not carefully read. He again requested that his essay answers be re-read and re-evaluated by an independent reappraiser. The Committee denied the petition.

On March 10, 1982, petitioner filed a petition in the California Supreme Court, seeking review and reversal of the Committee's decision on constitutional grounds. He attacked the validity of the requirement that applicants from unaccredited law schools must take and pass the FYLSX and alleged that his examination was not properly

read and graded. Petitioner also asked the California Supreme Court to enjoin the Committee from destroying any of the October 1981 FYLSX examination papers until his petition to that court was acted on.

The court below exercises original jurisdiction in considering actions of the Committee of Bar Examiners. It considers the merits of every petition for review filed by unsuccessful applicants. Petitions which are perceived by the court not to involve substantial questions requiring plenary consideration with full briefing on the merits and oral argument, are determined on the basis of preliminary pleadings and issuance of a writ of review is denied by order without opinion. (See Konigsberg v. State Bar of California, 353 U.S. 252, 254-258, 77 S.Ct. 722, 723-726 (1957).) By order filed

March 25, 1982, the petition for review was denied. (See Petition for Writ of Certiorari, appendix 1.)

The California Supreme Court denied a petition for rehearing and an application for stay by order filed April 15, 1982. (See Petition for Writ of Certiorari, appendix 2.)

REASON THE WRIT SHOULD BE DENIED

1. Petitioner's Constitutional Challenges to the Decision Below Are Without Merit

It is well settled that "[a] State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law." (Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 239; 77 S.Ct. 752, 756 (1957).)

The FYLSX is an examination which sets a minimal standard of proficiency in contracts, torts and criminal law after one year of study in an unaccredited law school. The standard must be met by all applicants who study law in unaccredited schools.

Petitioner does not assert, nor can

he assert, that there is no rational connection between California's requirement that all applicants from unaccredited schools take and pass the FYLSX, and its ultimate legitimate state purpose that all applicants demonstrate proficiency in the law as a prerequisite to admission.

However, in a strained effort to raise procedural due process issues and support his contention that the decision below is unconstitutional, petitioner attempts to analogize his circumstances to the circumstances of the petitioner in Willner v. Committee on Character and Fitness, etc., 373 U.S. 96; 83 S.Ct. 1175 (1963). There is no basis for such comparison. The petitioner in Willner passed the New York bar examination in 1936 but was refused certification for admission in 1938, following a moral character proceeding. Between 1938 and

1960, he made numerous attempts to find out the basis of the refusal but was not informed of the accusations against him and was not given the opportunity to confront and cross-examine his accusers. He challenged the proceedings on constitutional grounds and this Court held he had been denied procedural due process.

On the other hand, petitioner has twice failed to pass the FYLSX. Thus, he has been unable to meet a lawful, preliminary proficiency prerequisite to eligibility to take the General Bar Examination and certification for admission. He has not availed himself of the opportunity to take the FYLSX a third time.

Even though petitioner did not receive a high enough score on his October 1981 essay answers to come within the range of eligibility for

independent reappraisal and was unable to show that his failing the examination was due to a departure from established grading procedures or an arithmetical or clerical error, he sought special treatment and requested that the Committee grant him an independent reappraisal of his answers. The Committee denied his request and the California Supreme Court upheld the Committee action.

Petitioner now asserts that, on the basis of his suspicions that his essay answers on the October 1981 FYLSX were not properly read and graded, he is entitled to, and the California Supreme Court should have ordered, a full hearing on the matter, replete with a panoply of procedural due process requirements.

The California Supreme Court has consistently applied the following long-standing policy with respect to

complaints of applicants who fail to pass either FYLSX or the General Bar Examination:

> "The attitude of this court is that if any dissatisfied applicant can show that he was denied passage of the state bar examinations through fraud, imposition, or coercion, or that in any other manner he was prevented from a fair opportunity to take the examinations, this court will be willing to listen to his complaint. Inability to pass the examinations, which are successfully passed by other applicants, will, of course, not be inquired into by the court. ... one's general qualifications are not to be substituted for the requisite knowledge of law which one must possess in order to be admitted into the legal profession." (In re Admission to Practice Law, 1 Cal.2d 61, 64 (1934).)

Petitioner seeks exception from the application of this policy to his complaints by contending that by requiring that applicants who study in unaccredited schools take and pass the FYLSX before taking the General Bar

Examination, "California has created an entitlement that should be governed by the same procedural due process protections as spelled out by this Court in Willner." Clearly this contention is a non sequitur.

Petitioner also alleges that the decision below violates his rights to equal protection. He incorrectly states that "[a]n unsuccessful bar applicant can appeal his scores pursuant to the procedural due process rights as articulated in Willner; an unsuccessful FYLSE [sic] applicant can only request an independent reappraisal of his score if it falls between 540 and 560 out of 800." It should be noted that the same policies and rules with respect to reconsideration of grades apply to applicants who take and fail to pass the General Bar Examination as apply to applicants who take and fail to pass the

FYLSX. There is no provision which contemplates routine or automatic "appeal" of scores by applicants who fail the General Bar Examination or the FYLSX. The Committee's policy with respect to reconsideration of grades is stated supra at page 8. The independent reappraisal to which petitioner refers is, however, a routine part of the grading process, automatically applied if an applicant taking either the General Bar Examination or the FYLSX scores within a specified range on an examination.

The fact that an applicant who studies at an unaccredited school is required to take the FYLSX, and an applicant who studies at an accredited school is not required to do so, is a real difference in the treatment of the two sets of applicants in California. However, as pointed out by the

California Supreme Court in Bib'le v. Committee of Bar Examiners, 26 Cal.3d 548, 555 (1980), that difference does not constitute violation of equal protection. The holding in Bib'le was as follows:

> "Recent court decisions have uniformly rejected the claim there is no rational relationship to a legitimate state purpose in rules requiring different treatment in bar admissions depending on the nature or quality of legal education and training received by applicants to the bar. (See Huffman v. Montana Supreme Court (D.Mont. 1974) 372 F.Supp. 1175, affd. (1974) 419 U.S. 955 [42 L.Ed.2d 172, 95 S.Ct. 216]; Goldsmith v. Pringle (D.Colo. 1975) 399 F.Supp. 260.)
>
> "There is no question the FYLSX serves a legitimate state interest. It both protects persons from continuing to pursue a profession for which they are not qualified, and aids qualified persons in judging the quality of the training and education they are receiving in preparation for the bar examination. Not only are these legitimate state interests but there is a rational basis for the different treatment of

> students receiving instruction at accredited and unaccredited schools because the committee, by setting standards for accreditation, can impose minimum standards on the quality of education at accredited schools. Petitioner's equal protection challenge is thus without merit." (Emp. added.)

It is submitted that petitioner's efforts to translate his inability to pass the FYLSX into dimensions of deprivation of due process and equal protection are entirely without merit.

CONCLUSION

Contrary to petitioner's allegations, the orders of the court below did not violate his constitutional rights to due process and equal protection. The petition for a writ of certiorari should, therefore, be denied.

Dated: August 10, 1982

Respectfully submitted,

HERBERT M. ROSENTHAL
MAGDALENE Y. O'ROURKE
555 Franklin Street
San Francisco, CA 94102

ROBERT M. SWEET
1230 West Third Street
Los Angeles, CA 90017

Attorneys for Respondents

Rule 957. Law School Study in Schools Other Than Those Accredited by the Examining Committee*

(a) A person who seeks to be certified to the Supreme Court for admission in and licensed to practice law in accordance with section 6060(e)(3) of the Business and Professions Code shall receive credit for (i) study in a law school other than one accredited by the examining committee established by the board of governors of the State Bar pursuant to section 6046 of said code only if the law school satisfies the requirements of paragraph (b) or paragraph (c) of this rule; or (ii) instruction in law from a correspondence school only if the correspondence school requires 864 hours of preparation and study per year for four years and satisfies the requirements of paragraph (d) of this rule.

(b) A law school in this state that is not accredited by the examining committee, must

---

* Adopted by the Supreme Court of California effective Oct. 8, 1975.

(1) be authorized to confer professional degrees by the laws of this state,

(2) maintain a regular course of instruction in law, with a specified curriculum and regularly scheduled class sessions,

(3) require classroom attendance of its students for a minimum of 270 hours a year for at least four years, and further require regular attendance of each student at not less than 80 percent of the regularly scheduled class hours in each course in which such student was enrolled and maintain attendance records adequate to determine each student's compliance with such requirements,

(4) maintain, in a fixed location, physical facilities capable of accommodating the classes scheduled for that location,

(5) have an adequate faculty of instructors in law, provided that the faculty will prima facie be deemed adequate if at least 80 percent of the instruction in

each academic period is by persons who possess one or more of the following qualifications:

(i) admission to the general practice of the law in any jurisdiction in the United States,

(ii) judge of a United States court or a court of record in any jurisdiction in the United States, or

(iii) graduation from a law school accredited by the examining committee,

(6) own and maintain a library consisting of not less than the following sets of books, all of which shall be current and complete:

(i) the published reports of the decisions of California courts, with advance sheets and citator,

(ii) a digest or encyclopedia of California law,

(iii) an annotated set of the California codes,

(iv) a current, standard text or treatise for each course or subject in the curriculum of

the school for which such a text or treatise is available.

(7) establish and maintain standards for academic achievement, advancement in good standing and graduation and provide for periodic testing of all students to determine the quality of their performance in relation to such standards, and

(8) register with the examining committee, and maintain such records (available for inspection by the examining committee) and file with the examining committee such reports, notices and certifications, as may be required by the rules of the examining committee.

(c) A law school outside the state that is not accredited by the examining committee must

(1) be authorized to confer professional degrees by the law of the state in which it is located,

(2) comply with subparagraphs (2), (3), (4), (5), (7), and (8) of paragraph (b) of this rule, and

(3) own and maintain a library that is comparable in content to that specified in subparagraph (6) of paragraph (b) of this rule.

(d) It is the duty of a correspondence law school to register with the examining committee and file such reports, notices and certifications as may be required by the rules of the examining committee concerning any person whose mailing address is in the state of California or whose application to, contract with, or correspondence with or from the law school indicates that the instruction by correspondence is for the purpose or with the intent of qualifying that person for admission to practice law in California.

(e) The examining committee may make such inspection of law schools not accredited by the committee or correspondence schools as may be necessary or proper to effectuate the provisions of section 6060 of the Business and Professions Code and of this rule and of the rules of the examining committee.

(f) This rule shall not apply to any person who, on the effective date of the rule, had commenced the study of law in

a manner authorized by section 6060(e) of the Business and Professions Code and registered as a law student prior to January 1, 1976 (as provided in section 6060(d) of the Business and Professions Code) and otherwise satisfies the requirements of section 6060(e) of the Business and Professions Code; provided that after January 1, 1976 credit shall be given such person for any study in an unaccredited law school or by correspondence only if the school complies with the requirements of paragraph (b)(8) or paragraph (d) of this rule, whichever is applicable, and permits inspection as provided in paragraph (e) of this rule.